

SCR.A/1026/2005 1/6 JUDGMENT

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CRIMINAL APPLICATION No. 1026 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE KS JHAVERI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
- =====

REKHUBEN GULEKHAN - Applicant(s)**Versus****STATE OF GUJARAT - Respondent(s)****Appearance :**

MR EE SAIYED for Applicant(s) : 1, MR SIKANDER SAIYED for Applicant(s) : 1,
Mr.Gohil, Addl.PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**Date : 26/08/2005****ORAL JUDGMENT**

1.Rule. With the consent of learned advocates appearing for the parties matter is taken up for final hearint today.

2.The short facts of the case are that the vehicle of

the petitioner was seized by the police in connection with offence vide CR No.II-6/02 registered with the Pathawada Police Station under Prevention of Cruelty to Animals' Act and also under Animals' Protection Act. The petitioner filed the complaint before the Ld.Magistrate for grant of custody of the vehicle. However, the Ld.Magistrate declined the same as per order, dated 1.7.2002. It appears that the petitioner carried the matter before the Ld.Sessions Judge who also, as per order dated 11.5.05, dismissed the said application. Both the courts below mainly declined the custody on the ground that the the truck is used for third time for similar offence and therefore the custody is not given to the petitioner.

3.I have heard Mr.Saiyad for the petitioner and Mr.Gohil, Ld.APP for the State.

4.Mr.SAaiyad, the Ld.counsel for the petitioner has relied upon the decision of the Apex Court in the matter of Sunderbhai Ambalal Desai vs State of Gujarat reported in AIR 2003 SC 638, It deserves to be recorded that in the said decision the Apex Court while considering the question of exercise of power under section 451 Cr.P.C for vehicles, at paras 15, 16, 17 and 18, it was observed as under:

“15. Ld.Senior Counsel Mr.Dholakia appearing for the State of Gujarat further submitted that at present in the police station premises number of vehicles kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to handover such vehicles to its owner or to the person from whom the said vehicles are seized by taking appropriate bond and the guarantee for the return of the said vehicles if required by the court at any point of time.

16.However, the learned counsel appearing for the petitioners submitted that this question of handing over vehicles to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.

17.In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long time. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for the return of the said vehicles, if required at any point of time. This can be done pending hearing of application for return of such vehicles.

18.In case where the vehicle is not claimed by the accused,owner or the insurance company or by third person, then such vehicles may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If insurance company fails to take possession the vehicle may be sold as per the directions of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.”

5.If the matter is examined in the light of the observations made by the Apex Court, it appears that

the petitioner is claiming the ownership of the vehicle and there is no other claim made before the Ld.Magistrate for custody of the vehicle. At the same, Mr.Gohil, Ld.APP is justified in raising the grievance that the vehicle may not be used for same offence or for such illegal activities.

6. Therefore, with a view to see that the vehicle may not be used for such offence or other illegal activities and, if used, immediate action can be taken by the police, I find that if suitable conditions are imposed, same would take care of the situation. In any case, the petitioner, in capacity as the owner of the vehicle, would be entitled to use the vehicle for lawful purposes. The value of the vehicle can be said as approximately Rs.2.60,000/-. With a view to see that the vehicle is produced by the petitioner as and when desired by the trial court or by the police, appropriate conditions deserve to be issued for furnishing surety bond by the petitioner of the amount of Rs.2 lacs and the petitioner would also be required to deposit Rs.60,000/- In addition to the above, the petitioner shall also file an undertaking before the trial court that the vehicle shall only be used for lawful purposes and shall not be used for any unlawful purposes and shall be produced before the trial court

as and when ordered.

7. In view of the above observations, the impugned orders passed by the Ld. Magistrate as well as Ld. Sessions Judge are hereby quashed with further directions as stated hereinafter.

i. The vehicle of the petitioner bearing Reg.No. RJ-19-G-3453 shall be released immediately on compliance of the following conditions:

(A) That the petitioner shall deposit a sum of Rs.60,000/- with the trial court and shall furnish personal bond/ surety for Rs.2 lacs to the satisfaction of the trial court.

(B) That the petitioner shall file undertaking to the trial court to the effect that the vehicle shall be produced as and when ordered by the court or by the police and shall be used only for lawful purposes and shall not be used for any unlawful purpose.

(C) That the petitioner shall produce the vehicle before the concerned police station for showing the bonafides at the interval of every two months on the 1st Sunday between 1100 a.m and 2.00 p.m for inspection.

(D) The petitioner shall also use the vehicle as per his undertaking and if it is found by the police that the vehicle is used for transportation of animals which results into alleged offence of animal cruelty,

it would be open to the police to seize the vehicle without there being any specific order of this court as and when the vehicle is produced for inspection.

The petition is allowed to the aforesaid extent. Rule is made absolute accordingly.

DS permitted.

(JAYANT PATEL, J)

26.8.05/murty